

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1001 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 & 2 Yes. Nos. 3 to 5 No.

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KHEMIBEN W/O ISHWERJI

HARCHANDJI

Versus

DEPUTY POLICE COMMISSIONER

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Appearance:

MR ANIL S DAVE for Petitioner

MR.NEEGAM SHUKLA, APP for Respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 10/10/96

ORAL JUDGEMENT

Through this petition the petitioner seeks to challenge the order dated 21.3.1996 passed by the Deputy Police Commissioner, Traffic Branch, Ahmedabad City, whereby the petitioner was externed from the entire area coming under Ahmedabad City Police Commissioner and the rural area adjoining Ahmedabad, Gandhinagar, Kheda and Mehsana districts and the order dated 16.7.1996 passed by the Home Department of Government of Gujarat.

The present Special Criminal Application was filed in this Court on 31.7.1996 and on 1.8.1996 Rule returnable for the date of 26.8.1996 was issued and an affidavit-in-reply dated 5.10.1996 had been filed on behalf of the respondents on 5.10.1996. When the matter came up before this Court the learned Counsel for the petitioner Mr.A.S.Dave raised the question that the externment order had been passed after considerable delay which has not been explained. It is submitted that the show cause notice for externment under section 59 of the Bombay Police Act, 1951 issued by the Assistant Police Commissioner, 'E' Division, Ahmedabad City on 2.2.1995. Thereafter the petitioner filed reply to this show cause notice on 2.3.1995 and examined fifteen witnesses in support of his case. It is therefore submitted by Mr.Dave that the examination of the witnesses was over in September, 1995 and thereafter he did not seek any adjournment. Yet the final order was passed on 21.3.1996, and since then he is under externment. However the petitioner had preferred an appeal before the Appellate Authority i.e. Home Department and this appeal was rejected on 16.7.1996 by the Home Department and only thereafter the present petition was filed. Mr.Dave has specifically taken the ground of delay in passing the externment order in para 15 of the petition.

However, it was found that the affidavit-in-reply dated 5.10.1996 filed on behalf of the respondents is conspicuously silent about the question of delay raised by the petitioner in para 15 of the petition. In this view of the matter, Mr.Neegam Shukla, appearing on behalf of the respondent was granted time to file an additional affidavit and the query was made to Mr.Dave to show as to whether point with regard to delay in passing the externment order and it had been urged before the Appellate Authority or not and in case it had not been taken whether the petitioner was allowed to raise this point in the writ proceedings if it requires investigation of any facts.

Today when the matter came up before the Court Mr.Neegam Shukla submitted that no further additional affidavit has been filed and submitted that after the inquiry was over by the Assistant Police Commissioner the matter was referred by him on 20.9.1995 to the Deputy Commissioner of Police and the Deputy Commissioner of Police then passed an order on 21.3.1996. Mr.Dave has submitted that whereas no additional affidavit has been filed and no further investigation is required with regard to any facts, he may be permitted to raise the question of delay as the impugned orders seek to violate

the petitioner's fundamental rights. In the peculiar facts of this case I feel inclined that when no further factual inquiry was required to be made whether the point of delay was taken and urged by the petitioner before the Appellate Authority or not the petitioner may be permitted to raise this question in this proceedings.

While the externment order dated 2.2.1995 has also been challenged by the petitioner on merits, the matter can be disposed of only on the ground of admitted facts with regard to delay in passing the externment order. It is an admitted position that the show cause notice under section 59 was issued on 2.2.1995 by the Assistant Police Commissioner, 'E' Division, Ahmedabad. The petitioner had filed reply on 2.3.1995 and had completed the examination of his witnesses in September, 1995. The Assistant Commissioner of Police had made report to the Deputy Commissioner of Police on 20.12.1995 and the Deputy Commissioner of Police had passed an order on 21.3.1996. Thus, virtually there is no explanation whatsoever with regard to the period from September, 1995 and even if it is considered that the Assistant Police Commissioner had made report beyond December, 1995, there is no explanation for that beyond December, 1995 till March, 1996 when the impugned order of externment was passed. The Appellate Authority while passing the order in July 1996 has not said anything on this aspect of the matter although record was available on the basis of which this matter could be threshed out at the appellate stage itself.

Mr.Dave has placed reliance on unreported decision of this Court rendered in Special Criminal Application No.1295 of 1994 passed by the Division Bench on 24.1.1995 in which the show cause notice for respondent had been issued in April, 1992 and the order of externment was passed on 12.3.1994. The Division Bench has observed that with the lapse of time the grounds which had obliged the authority concerned to issue a statutory notice and to proceed ahead against proposed externee might have been diluted or finished and such delay was found to be fatal to the order of externment and accordingly the externment order was quashed and set aside. In the present case the total period between show cause notice and the order of externment is also more than one year and I find that even after the completion of the examination of the witnesses and petitioner, the concerned authority has taken six months time in passing the final order of externment. Applying the principle laid down by the Division Bench in the case as aforesaid, the impugned

order of externment dated 21.3.1996 and the Appeal order dated 16.7.1996 deserves to be quashed and set aside on this count alone as the respondents have failed to explain the delay despite grant of sufficient opportunity by this Court.

Accordingly the impugned order dated 21.3.1996 passed by the Deputy Commissioner of Police, Traffic Branch, Ahmedabad City and the order dated 16.7.1996 passed by the Home Department under the signature of the Deputy Secretary (Special) Home Department, Government of Gujarat are hereby quashed and set aside. Rule is made absolute. Direct Service is permitted.

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